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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,848	06/25/2002	Tomas Albrektsson	0104-0389P	5296
2292	7590	04/26/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			BLANCO, JAVIER G	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 04/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,848	Applicant(s) ALBREKTSSON ET AL. ✓	
	Examiner Javier G. Blanco	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38,39,52-60,62,63,67-73 and 75-78 is/are rejected.
- 7) ☒ Claim(s) 40-51,61,64-66 and 74 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 13, 2006 has been entered.

Response to Amendment

2. Applicants' amendment of claims 38, 68-71, and 76 in the reply filed on October 19, 2005 is acknowledged.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 38, 39, 52-56, 58, 59, 67, 68, 70, 73, and 75-78 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Baroud et al. (DE 197 25 269 A1; previously cited by the Examiner in the PTO-892 filed October 15, 2004).

As seen in Figure 1, Baroud et al. disclose a femur fixture for a hip-joint prosthesis, comprising:

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- a. An intraosseous anchoring structure of a generally circular cross-section *for screwing* laterally into a complementary bore drilled laterally into the neck of a femur after resection of the femur head to an anchored position, the intraosseous anchoring structure being formed from a single, one-piece member and having a proximal end, a distal end, a frusto-conical proximal section (sleeve 4 has a frusto-conical proximal section) at the proximal section, and a proximal cylindrical section (extension 5) having a screw thread profile (see profile shown in Figure 1) thereon and extending towards the distal end from the frusto-conical proximal section, the screw thread profile extending from said frusto-conical proximal section towards the distal end, said frusto-conical proximal section being shorter than said proximal cylindrical section;
- b. A collar section (e.g., either top portion of sleeve 4 and/or collar 7) having a distal surface abutting and extending outwardly from the frusto-conical proximal section, said collar section extending generally radially outwardly from the intraosseous anchoring structure; and
- c. A head section (shaft 1) for supporting a ball component.

5. Claims 38, 39, 52, 56, 58-60, 63, 67, 73, and 75-78 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Surer (FR 2 674 122 A1).

As seen in Figures 1 and 3-7, Surer disclose a femur fixture for a hip-joint prosthesis, comprising:

- a. An intraosseous anchoring structure of a generally circular cross-section *for screwing* laterally into a complementary bore drilled laterally into the neck of a femur after resection of the femur head to an anchored position, the intraosseous anchoring structure being formed from a single, one-piece member and having a proximal end, a distal end, a frusto-conical proximal section (**Figure 1**: frusto-conical portion of character 26; **Figure 7**: frusto-conical portion of character

80; **Figure 7:** frusto-conical portion of character 86; Figure 7: frusto-conical portion of character 84) at the proximal section, and a proximal cylindrical section having a screw thread profile thereon and extending towards the distal end from the frusto-conical proximal section, the screw thread profile extending from said frusto-conical proximal section towards the distal end, said frusto-conical proximal section being shorter than said proximal cylindrical section; and

b. A collar section (**Figure 1:** plate 18; **Figure 7:** character 86; **Figure 7:** plate 84) having a distal surface abutting and extending outwardly from the frusto-conical proximal section, said collar section extending generally radially outwardly from the intraosseous anchoring structure.

c. A head section (Figures 1 and 3-7) for supporting a ball component.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rambert et al. (GB 2 033 755 A) in view of Baroud et al. (DE 197 25 269 A1; previously cited by the Examiner in the PTO-892 filed October 15, 2004).

As seen in Figure 1, Rambert et al. disclose a femur fixture for a hip-joint prosthesis, comprising an intraosseous anchoring structure of a generally circular cross-section for screwing laterally into a complementary bore drilled laterally into the neck of a femur after resection of the femur head to an anchored position (see entire document), the intraosseous anchoring structure

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comprising a head section (cylindrical thread 4 + conical bearing 5), a collar section (plate 2) having a distal surface abutting said intraosseous anchoring structure (see Figure 1), a frusto-conical proximal section (threaded rod 7), a proximal cylindrical section (recall screw 15) having a screw thread profile, and a distal end (threaded head of 15) that projects through the lateral cortex of the femur when the intraosseous anchoring structure is in the anchored position (see Figure 1; see entire document). Rambert et al. disclose the invention as claimed except for particularly disclosing the mounting section as tapered. However, this is well known in the art. For example, Baroud et al. disclose a femur fixture comprising a tapered mounting section in order to support a ball component of a hip joint prosthesis (see entire document). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teaching of a femur fixture comprising a tapered mounting section, as taught by Baroud et al., with the femur fixture of Rambert et al., in order to support a ball component of a hip joint prosthesis.

8. Claims 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surer (FR 2 674 122 A1).

Surer discloses the invention as claimed in claims 38, 39, 52, 56, 58-60, 63, 67, 73, and 75-78, except for particularly disclosing the specific ranges/measurements indicated in claims 53-55. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have manufactured the frusto-conical proximal section of Surer's femur fixture to have any of the ranges/measurements indicated in claims 53-55, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claims 62 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baroud et al. (DE 197 25 269 A1; previously cited by the Examiner in the PTO-892 filed October 15, 2004).

Baroud et al. disclose the invention as claimed in claims 38, 39, 52-56, 58, 59, 67, 68, 70, 73, and 75-78, except for particularly disclosing the specific ranges/measurements indicated in claims 62 and 69. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have manufactured the Baroud et al.'s femur fixture to have any of the ranges/measurements indicated in claims 62 and 69, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

10. Claims 71 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baroud et al. (DE 197 25 269 A1; previously cited by the Examiner in the PTO-892 filed October 15, 2004) in view of Sotereanos (US 6,284,002 B1; previously cited in PTO-892).

Baroud et al. disclose the invention as claimed in claims 38, 39, 52-56, 58, 59, 67, 68, 70, 73, and 75-78, except for particularly disclosing the distal surface of the collar section 20 as comprising circular beads. However, Sotereanos discloses a femur fixture comprising a collar section 20 having a distal surface 32 inclined inwardly and provided with micro-beads 22/24 in order for the collar section to contact substantially all of the resected surface of the femur and to provide additional surface for bone ingrowth (see entire document). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teaching of providing a femur fixture with a collar section having a distal surface inclined inwardly and provided with micro-beads, as taught by Sotereanos, with the femur

fixture of Baroud et al., in order for the collar section to contact substantially all of the resected surface of the femur and to provide additional surface for bone ingrowth.

11. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baroud et al. (DE 197 25 269 A1; previously cited by the Examiner in the PTO-892 filed October 15, 2004) in view of Hansson et al. (US 5,588,838 A).

Baroud et al. disclose the invention as claimed in claims 38, 39, 52-56, 58, 59, 67, 68, 70, 73, and 75-78, except for particularly disclosing the frusto-conical proximal section as having a roughened surface (e.g., blasted surface). However, this is well known in the art. For example, Hansson et al. disclose a fixture comprising a relatively short frusto-conical proximal section (conically flaring portion 10) having a roughened surface (e.g., circumferentially oriented micro-threads, micro-beads, blasted surface) in order to increase the anchoring surface abutting the bone tissue and also to improve osseointegration of the fixture (see entire document). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teaching of providing the frusto-conical proximal section of a fixture with a roughened surface (e.g., circumferentially oriented micro-threads, micro-beads, blasted surface), as taught by Hansson et al., with the femur fixture of Baroud et al., in order to increase the anchoring surface abutting the bone tissue and also to improve osseointegration of the fixture.

Response to Arguments

12. Applicant's arguments with respect to claims 38 and 76 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

13. Claims 40-51, 61, 64-66, and 74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


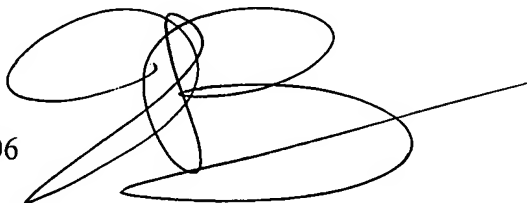
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Lundholm (US 2,570,465) and Steinleitner (DE 3607824).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (9:30 a.m.-7:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB

April 22, 2006



David H. Willse
Primary Examiner